Supreme Court, U.S.
FILED
APR 22 2002
CLERK

(4)

No. 01-1290

IN THE

Supreme Court of the United States

SAM MCINNIS AND TIM SHINGLETON,
Petitioners,

v.

PAMELA ALICE LITTLE DANIEL, AS ADMINISTRATRIX OF THE ESTATE OF JOE ED DANIEL,
Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

SUPPLEMENTAL BRIEF FOR PETITIONERS

THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

ROBERT H. BORK
Counsel of Record
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 862-5851

EDWARD C. GREENE
FRAZER, GREENE, UPCHURCH & BAKER, L.L.C.
P.O. Box 1686
Mobile, Alabama 36633
(251) 431-6020

MARK A. ASH
KIRK G. WARNER
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN L.L.P.
2500 First Union Capitol Center
Raleigh, North Carolina 27602
(919) 821-1220

Counsel for Petitioners

4pp

SUPPLEMENTAL BRIEF FOR PETITIONERS

Pursuant to this Court's Rule 15.8, petitioners respectfully submit this supplemental brief to bring to the Court's attention "intervening matter not available at the time of [petitioners'] last filing." SUP. CT. R. 15.8. As discussed below, this Court's decision to defer consideration of the petition for a writ of certiorari in *DaimlerChrysler Aktiengesellschaft v. Olson*, No. 01-929 (pet. for cert. filed Dec. 19, 2001), apparently in order to consider that petition together with the petition for a writ of certiorari in *Southern Company v. Alderson*, No. 01-1200 (pet. for cert. filed Feb. 14, 2002), is a significant intervening fact that militates in favor of the Court's consideration (and grant) of this petition together with the petitions in *DaimlerChrysler* and *Southern Company*.

1. The petitions in both *DaimlerChrysler* and *Southern Company* present important questions regarding the federal due process limits on assertions of "general" personal jurisdiction over non-resident defendants. In addition, *DaimlerChrysler* also implicates the first question presented in this petition, namely, the proper test for "relatedness" in "specific" jurisdiction cases, a recurring and important issue that continues to divide the lower state and federal courts. *See* Pet. 9-18 & n.5; Pet. in *DaimlerChrysler*, No. 01-929, at 28-30.

On February 4, 2002, Southern Company *et al.* filed an *amici curiae* brief in the *DaimlerChrysler* case, suggesting that consideration of the *DaimlerChrysler* petition be deferred "until the petition for certiorari in *Southern Company* has been filed and is ripe for this Court's review." Br. *Amici Curiae* of Southern Company, *et al.*, in *DaimlerChrysler*, No. 01-929, at 5.

The petition in *DaimlerChrysler* was scheduled for consideration at this Court's April 19, 2002, conference, but was taken off that conference list last week. It appears likely, therefore, that the Court has decided to defer consideration of the *DaimlerChrysler* petition until the *Southern Company* pe-

tition is ripe for consideration at the May 16, 2002, conference, thereby permitting the Court to consider both petitions together.

2. In light of the Court's apparent decision to consider the personal jurisdiction issues in *DaimlerChrysler* and *Southern Company* at the same time, petitioners respectfully submit that the Court may also wish to consider the instant petition together with the *DaimlerChrysler* and *Southern Company* petitions, because all three cases raise significant questions regarding the scope of the due process limitations on state-court assertions of personal jurisdiction over nonresident defendants. Indeed, on April 19, 2002, DaimlerChrysler filed an *amicus curiae* brief in the *Southern Company* case, noting the interrelated nature of these three cases and suggesting that "this Court should give serious consideration to granting *all three* of these cases." Br. *Amicus Curiae* of DaimlerChrysler Aktiengesellschaft in *Southern Company*, No. 01-1200, at 8. As that *amicus* brief explains (*id.* at 8-10), the important questions presented in *McInnis* complement those at issue in *DaimlerChrysler* and *Southern Company*. In combination, these cases offer the Court an opportunity to bring meaningful clarity to this area of the law by resolving several important issues that have divided the lower courts in personal jurisdiction cases.

CONCLUSION

For the foregoing reasons and those set forth in the petition and reply brief, petitioners respectfully suggest that the Court should consider this petition together with the petitions in *DaimlerChrysler* and *Southern Company* and either grant all three petitions or, in any event, grant this petition and set the case for full briefing and argument.

Respectfully submitted.

THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

ROBERT H. BORK
Counsel of Record
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 862-5851

EDWARD C. GREENE
FRAZER, GREENE, UPCHURCH & BAKER, L.L.C.
P.O. Box 1686
Mobile, Alabama 36633
(251) 431-6020

MARK A. ASH
KIRK G. WARNER
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN L.L.P.
2500 First Union Capitol Center
Raleigh, North Carolina 27602
(919) 821-1220

Counsel for Petitioners

April 22, 2002